
IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

THE CITY OF INDIANAPOLIS, ET AL.,

Petitioners,

v.

THE CHASE NATIONAL BANK OF THE CITY
OF NEW YORK, TRUSTEE, ETC., ET AL.,

Respondents.

Nos. 10 and 11

THE CHASE NATIONAL BANK OF THE CITY
OF NEW YORK, TRUSTEE, ETC.,

Cross-Petitioners,

v.

CITIZENS GAS COMPANY OF INDIANAPOLIS,
ET AL.,

Respondents.

Nos. 12 and 13

Supplemental answer brief of Indianapolis Gas Com-
pany, Respondent, with request for leave to file same.

LOUIS B. EWBANK,

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Indianapolis, Indiana,

*Counsel for The Indianapolis Gas
Company, Respondent.*

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<i>v.</i>		
CITIZENS GAS COMPANY OF INDIANAPOLIS, ET AL., <i>Respondents.</i>		

Indianapolis Gas Company, Respondent, respectfully asks permission of the Court to file its supplemental answer brief hereinafter set out.

Respectfully submitted,

LOUIS B. EWBANK,
WILLIAM R. HIGGINS,

*Counsel for The Indianapolis Gas
Company, Respondent.*

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SUPPLEMENTAL ANSWER BRIEF OF
INDIANAPOLIS GAS COMPANY, RESPONDENT

[NOTE: All propositions advanced in respondents' original brief are still relied on and this memorandum is intended merely to supplement that brief by replying to the supplemental brief filed by the City, et al., September 1, 1941.]

- * 1. All emphasis ours unless otherwise stated.
- 2. The several appendices at the end of this brief recite the language of Indiana Statutes cited.

I.

**Factual Summary Correcting Statements of Petitioner City
on Page 4 of Its Supplemental Memorandum.**

The Todd case held only that the stockholders had created a charitable trust in their own excess profits above amounts invested plus 250% (Indianapolis Gas Brief, pp. 68, 69).

The law (Appendix A) authorized these two public utilities to execute this lease precisely as they did (I R. 116 to 122; offered II R. 327).

The "articles" (I R. 99) and stock certificates (II R. 768) and statutes (Appendices C and D) and the deed (III R. 834) and assignment (I R. 144(4)) from Citizens Gas all make the City's title "subject to legal obligations" of its grantor. Under authority of Appendix B, the City by ordinance (III R. 1018-1019, offered II R. 439) accepted the entire public trust, and also by the resolution for temporary use (I R. 200, 201; offered III R. 1037, 1042). Citizens Gas was bound to so extend its plant that all inhabitants be supplied (I R. 89(17); offered II R. 327).

The same promoters, trustees and directors who organized Citizens Gas executed this lease, doubtless for the same ultimate trust purpose (II R. 336 to 338).

II.

The Decision of the Circuit Court of Appeals.

The opinion and judgment of the Circuit Court of Appeals here for review (113 Fed. 2nd 217) is definite and unambiguous. Its *rational* may be briefly stated in the following conclusions reached by that Court:

1. The lease of 1913 between Citizens Gas and Indianapolis Gas was one for 99 years and not for an indefinite or shorter term.

2. Citizens Gas, as trustee of a trust which was a public utility, was empowered to acquire for the trust estate the leasehold interest in the property of Indianapolis Gas upon the approval of the Public Service Commission of Indiana, which was had.

3. The leasehold estate validly acquired became and remains for its term of 99 years part and parcel of the trust estate.

4. The validity of the lease for its term had been adjudged by the Supreme Court of Indiana in *Williams v. Citizens Gas Company, et al.*, and by the Superior Court of Marion County, Indiana, in *Fishback v. Public Service Commission, et al.*

5. The lease obligations of the trust are not affected or destroyed by reason of the substitution or change of trustees.

6. City in declaring its intention to succeed Citizens Gas as trustee, and in so doing, is obligated to accept the entire trust subject to all the legal obligations which had been created by Citizens Gas, initial trustee, during its period of trusteeship.

7. The liability for payment of past due bond interest on Indianapolis Gas bonds is that, of the City as present trustee and the trust, Citizens Gas and Indianapolis Gas in the order named.

8. Plaintiff below for bondholders is entitled to interest on unpaid interest coupons of Indianapolis Gas bonds from the date of their respective defaults at the rate of

5% per annum, *per* the contract rate and in accordance with Indiana statutory provisions.

Each of the above conclusions followed and is in complete accord with the settled law of Indiana, as discussed at pages 77-79 of original brief.

The statement in City's memorandum on page 15 that the Court held the lease to be enforceable against the City if not burdensome in character, but unenforceable if burdensome, is not correct. The judgment that the lease was valid and enforceable was subject to no conditions. The Court did say, as dictum in discussing generally the powers of a trustee, that "in making a long term lease a trustee is under a duty to act with prudence. If a trustee makes a lease which is unreasonable under the circumstances it thereby commits a breach of trust and incurs liability to beneficiaries who may have such a lease set aside."

This is a correct statement of a general principle; one which was not violated by Citizens Gas in the execution of the lease. By no interpretation can it be construed to mean that the lease in question was held to be enforceable only if not now burdensome. Even if the lease had been burdensome from its creation, which is judicially denied by the judgments in the Williams and Fishback cases as well as by the findings of the Public Service Commission, the Court did not hold that its validity could now be challenged by the lessee, or its successor, upon such ground after being utilized and accepted for 22 years. That such an attack would be defeated by the rule of laches is discussed in our original brief at pages 56-60.

The decision furthermore need not rest on implied powers of Citizens Gas, initial trustee, as contended in City's memorandum (p. 4). Had the Court of Appeals

held that the power in Citizens Gas, trustee, to execute the lease was one expressly given, it would have been equally sustainable. Direction was expressly given Citizens Gas in its franchise to "secure, acquire or construct" the gas plant for the purposes of supplying gas to all the citizens of Indianapolis (I R. 85).

An express direction to "secure" or "acquire" such gas property can be none other than a granting of an express power to secure or acquire such facilities. This could only be exercised by purchase or lease and in the present case the latter method was adopted as most advantageous to the trust.

III.

Citizens Gas Was a Public Utility Incorporated by General Law Which Empowered It to Execute the Lease.

Each party to the lease was a public utility gas company with the right to an indeterminate permit (Appendix G) which each took, and statutory power to make this lease (Appendix A). The City by express authority of statutes (Appendices B, C and D) took the property over subject to all the lessee's legal obligations (I R. 124; III R. 834; Indianapolis Gas Brief, pp. 32 to 38). This binds the City by such obligations to the extent of the trust property.

No. 2. The general law under which, alone, Citizens Gas could be (Const. Ind. Art. 11, sec. 13) and actually (Appendix F) was incorporated (II R. 622, No. 6(a); offered R. 326) expressly limited the purpose for which it was formed "to supply the City of Indianapolis and its inhabitants with light, heat and power," and expressly authorized a lease to a competitor (Appendix A). Any-

thing in the "articles" that is not from the general law was void (Indianapolis Gas Brief, pp. 67 to 69).

The trust duty under the franchise contract, was to "secure, acquire or construct" (I R. 85, No. 3), a plant such "that all inhabitants of said City may be supplied with gas" (I R. 89(17)), and by leasing was the only way Citizens Gas could get the plant that served most of the City.

No. 7. The "trust" expressly requiring extension of the lines of Citizens Gas to "supply all the inhabitants with gas" (I R. 89(17)), subject to repaying investors 350% (I R. 84, f) and subject to all legal obligations (I R. 85 (i); 93 (22)), and it having by that means acquired lines reaching four-fifths of its customers through taking this lease (III R. 901; II R. 535), such lease is an essential part of the trust.

Section 95½ of Chapter 76, Acts 1913 (Appendix A) had authorized a lease binding on Citizens Gas and its grantee, and conferred on the Public Service Commission express power to confirm this lease (March 4, 1913) before it was executed, October 1, 1913 (I R. 116-122; offered II R. 327) and by section 130 had repealed all inconsistent laws (Appendix L). And section 53 of the City Charter (Appendix B) had empowered the City to accept this public trust and bind itself to carry out its conditions, and Chapters 77 and 78 of Acts Indiana 1929 (Appendices C and D) expressly authorized the City to accept the gas plant property from Citizens Gas subject to all legal obligations and to do all the acts which were done by the City in binding it as trustee to perform the lease.

All provisions in the franchise (I R. 93 (22)), and the stockholders' agreements (I R. 99, XII), and the convey-

ances to the City of both personal (I R. 125) and real (II R. 834) property were that the property should be taken "subject to all legal obligations" which was also named as a condition in both of the enabling statutes, Chapters 78 (Appendix C) and 77 (Appendix D) of Acts Indiana 1929, subject to which each of said instruments of conveyance recited that it was made.

How this Board of Directors for Utilities could accept the gas plant worth \$13,431,230 otherwise than subject to the grantor's contract obligations, including this lease, does not appear.

"PURPOSE" OF ORGANIZING CITIZENS GAS WAS NOT
"COMPETITION."

Citizens Gas was organized under the general corporation laws of Indiana and its purpose as stated in its Articles of Incorporation was "to supply the City of Indianapolis and its inhabitants with light, heat and power" (I R. 95; offered II R. 327). The suggestion that its primary purpose was to provide and continue indefinitely competition with Indianapolis Gas is wholly fatuous. Competition may or may not be an incident to carrying out an avowed purpose, but it is not *per se* the end sought. Whether the objective supplying gas to a community might be more effectively obtained through competition or without it, were matters to be determined by the judgment of the corporation under all existing circumstances.

The law under which Citizens Gas was incorporated (Appendix F) only authorized its articles to contract that its purpose should be "to furnish light, heat and power" to a city "for the term of 50 years," which they did (I R.

95, III R. 99, XIII). And all "trust provisions" not authorized by the statute are void.

Indiana Bond Co. v. Ogle, 22 Ind. App. 593, 595.

It was by this lease on two-thirds of the gas mains serving for fifths of the meters (and of the proposed beneficiaries) in the City (I R. 195, 196: offered II R. 327) that competition with Indianapolis Gas was ended, being the only possible way.

IV.

City, Existing Only Under the General Law and Subject Thereto, by Accepting the Public Trust Bound Itself to Carry Out Its Terms and Conditions.

MEETING CITY'S SUPPLEMENTAL MEMORANDUM,
PAGES 6 TO 9.

Special Charters for municipal corporations as of all other corporations are forbidden by the Constitution of Indiana.

Const. Ind. Art. 11, sec. 13.

The "franchise contract" relied on was made by the City only as an agency of the State and its surrender in 1921 in exchange for an Indeterminate Permit from the State (II R. 622, f) under express legislative authority (Appendices E and G) had the effect that thereby the City franchise contract "was abrogated and rescinded *in toto* as to both parties."

Greensburg Water Co. v. Lewis, 189 Ind. 439, 454.

Sections 85 and 254 were repealed. So far, if at all, as Chapter 129, Acts Indiana 1905, sections 85 and 254, were in conflict with the Public Service Commission Act (Appendix A) they were repealed by the last section (130) of Chapter 76, Acts 1913 (Appendix L), which expressly repealed all prior legislation "so far as inconsistent therewith." This included repeal of all statutes (if any) which forbade the execution of this lease "at a price and on terms fixed by the Commission" (Appendix A).

Citizens Gas was a public utility corporation (Appendix F) formed for the sole statutory purpose "to supply the City of Indianapolis and its inhabitants with light, heat and power" (I R. 95, III). The City was a municipal corporation. Neither had or could have any *special* charter rights (Ind. Const. Art. 11, sec. 13). The law made void as against creditors any trust the stockholders might create for their own benefit (Appendix K), and this trust reserved to the creators 350% of their investment, but "subject to legal liabilities." The City could not have any rights in the trust that would violate those laws.

NOTHING WAS DECIDED AS TO RES ADJUDICATA.

The Circuit Court of Appeals did not find anything was *res adjudicata*. It only held, in strict compliance with *Eric Railroad Co. v. Tompkins*, 304 U. S. 64, and cases following it, that the validity and binding effect of this lease upon the City being strictly a question of Indiana State law, the State decisions cited "are determinative of the immediate issue here, i. e. as to the validity of the 99-year lease" (IV R. 1300).

See Brief of Indianapolis Gas, pages 15 to 18.

The cases of *Fishback v. Public Service Commission* as decided by the Superior Court of Marion County, Indiana (II R. 648 to 668), and *Williams v. Citizens Gas Company* (II R. 761 to 812), reported on appeal in 206 Ind. 448, were cited and relied on by the Circuit Court of Appeals as determining what is the law of Indiana concerning the matters there determined when again in issue, in a Federal Court.

West v. American T. & T. Co. (Dec. 9, 1940), 311 U. S. 223;

Klaxon Co. v. Stentor Elec. Mfg. Co. (June 2, 1941), 85 L. Ed. (Adv.) 969.

In *Williams v. Citizens Gas* all parties now before the court filed demurrers to the complaint and supplemental complaint which were all sustained and final judgment entered (II R. 630 to 633, No. 14) that was affirmed on appeal as *Williams v. Citizens Gas*, 206 Ind. 448. The City's demurrer (III R. 813) and the complaint (II R. 761 to 802) and supplemental complaint (R. 802, 803) are in the record. They alleged substantially the facts proved in this case, including the City Franchise and Articles of Incorporation of Citizens Gas (II R. 765), the stock subscriptions and certificates (R. 766, 767), its acquisition of property (R. 774), the enactment of the Public Service Commission Act (R. 776 to 779), the making of this lease and its approval by the Commission (R. 779, 780), surrender of the City franchise for an Indeterminate Permit (R. 783, 784), the enactment of Chapters 77 and 78 of Indiana Acts of 1929 (Appendices C and D), and the declared purpose of the City to accept the trust property, including the leasehold (R. 791 to 793), with many allegations that the lease will be a great burden upon the trust.

The law of Indiana as declared by the State courts with reference to those facts is binding here as to the same facts (*Erie Railroad v. Tompkins*, 304 U. S. 64).

All said facts to and including the execution of the lease and its approval by the Public Service Commission were alleged in the several paragraphs of complaint by Fishback set out in the record (II R. 648 to 668) to which numerous demurrers were sustained, including those by all parties here except this plaintiff and the City (II R. 624 to 627, No. 9), which demurrers were all sustained and final judgment was rendered thereon that is in full force (II R. 625, 626, No. (e) and (i)). This also determines the law of Indiana.

West v. American Teleph. & Teleg. Co. (Dec. 9, 1940), 311 U. S. 223.

STATUTES EXPRESSLY PROVIDED FOR LEASE AFTER CHANGE OF TRUSTEES.

In the Indiana Acts of 1929, Ch. 78 (Appendix C), express provision is made for the City to succeed Citizens Gas as Trustee and to "accept, hold and own * * * any right, title or interest such transferring corporation may have in any lease upon any other property." Thus is here found a denial by the General Assembly that this lease should terminate upon the change of trustees. The mains of both Gas Companies as well as their entire facilities were intermingled and they were both equally utilized for the performance of the purposes of the trust, viz., to supply light, heat and power to the City of Indianapolis and its inhabitants.

STATUTES DIRECT THAT TITLE VESTS IN CITY "SUBJECT TO LEGAL OBLIGATIONS"

To question the power of the City to accept the lease by assignment of property subject thereto is a sheer denial of Chapter 77 of Indiana Acts of 1929 (Appendix D), and to assert that the City in taking title to property of Citizens Gas might do so without assuming the lease obligation is directly contradictory of Chapter 78 (Appendix C). The Act of 1929, Chapter 78 (Appendix C) is both mandatory and explicit. It states that when such trust property is conveyed by the Corporation to the City "the title to such property *shall* vest in such town or city *subject* to all outstanding legal obligations of said Corporation."

The express power to accept the lease was obviously provided in the Statute to ensure the effectiveness of the further provision that title to all the property and assets "*shall* vest subject to all legal obligations."

POSSESSION TAKEN OF LEASED PLANT WAS AS TRUST LESSEE.

Possession could not have been lawfully taken by the City under the Resolution of its Directors for Utilities referred to "as one for temporary use." No right exists in the Department of Utilities to take possession of property belonging to another under any such resolution, and counsel for City has offered no authority supporting such a right. City's possession of the leasehold property during the months before it had any contract with Indianapolis Gas was therefore lawfully obtained only through its undertaking to operate under the lease which necessarily accompanied the acceptance of the lessee's property "subject to all legal obligations."

V.

Relative to Issue of "Burdensomeness."

During argument counsel for City was asked: "What is the test as to burdensomeness"? The question is pertinent but no answer has been made to it by City either in argument or supplemental memorandum. Certain observations as to this issue are proper:

First. This issue was presented only as a ground for an alleged right in the City to refuse and reject an assignment of the lease (II R. 321-322). If City did in fact accept the assignment of said lease and take possession of said leased property thereunder, as has been shown was in fact done, then obviously the issue is not properly present for consideration.

Second. The time at which the test of burdensomeness is sought to be made has been definitely fixed by City both in its petition for a rehearing before the Court of Appeals (4 R. 1310) and in its petition for certiorari presented to this Court (p. 6). City seeks the right to offer evidence that the lease was burdensome, not on March 20, 1929, when it elected to succeed to the trusteeship, nor on September 9, 1935, when it took over all property and assets of the trust, but at the time the lease was executed in 1913. It now seeks in fact "to have the lower Court determine whether *when executed* this lease *was* in fact burdensome." (IV R. 1310.)

It is therefore upon refusal of the Court to order a trial of that issue, to now determine whether this lease was in fact burdensome some 28 years ago, that City predicates its contention that its constitutional rights of due process have been violated.

In view of City's admission that the lease was valid from 1913 until 1935 during the trusteeship of Citizens Gas, it may be asked how the lease being admittedly valid in the hands of one trustee for 22 years could then suddenly become invalid in the hands of a successor trustee because "when made the lease was in fact burdensome." Surely a lease, whose validity could not for 22 years be successfully attacked on the ground that it was burdensome when made, would not thereafter be subject to successful attack upon such ground.

Whatever test of burdensomeness might be urged, it is certain that no obligations under the lease are in any degree either increased or changed by the substitution of trustees. No burden is placed either upon the trust or the present trustee which was not borne and accepted by the initial trustee. Neither may the value of the property of Indianapolis Gas in 1913, upon which the lease was approved by the Commission, nor the reasonableness of the rental charges be in any wise affected by the fact that City has now succeeded Citizens Gas as trustee.

If the test of burdensomeness were whether or not the trust benefited from the lease, the record offers a definite answer.

Aside from the value of the physical property of Indianapolis Gas, undoubtedly the value to the trust of the elimination of competition was real and was given definite consideration by Citizens Gas and also the Public Service Commission in its findings that the terms and provisions were fair and equitable and that the lease itself was in the public interest.

This value, in connection with other values, may now in retrospect be more accurately appraised than it could

have been in 1913 by briefly viewing the increased annual net earnings of the trust following the execution of this lease.

For 1913, before obtaining this lease, Citizens Gas reported net earnings of \$202,584.24 (II R. 614); for 1915, the second year of operation under the lease, net earnings had increased to \$368,973.18 (II R. 605); for 1929, when City elected to succeed to the trusteeship, net earnings were \$680,055.91; for the year 1934, last preceding the change of trustee, net earnings were \$668,813.00 (II R. 542); and for 1935, the year of the succession, net earnings were \$752,250.00 (II R. 542).

Thus is presented conclusive evidence of the soundness of the judgment of Citizens Gas in seeking a local ownership of Indianapolis Gas so that the lease might be made, securing to the trust the elimination of competition and sole control of a unified gas system for a period of ninety-nine years.

In this retrospect is also seen a factual verification of the judgment of the Public Service Commission that the rentals and terms of the lease were fair and reasonable, and that through its execution both the best interests of the trust and the public would be served. Also of its finding that

"the two plants are so constructed and laid out as to adapt the two to a single working plant of great efficiency and under one management they can be operated at a great saving as compared with the cost of operating them as separate and competitive plants." (I R. 117; II R. 623.)

Time has also proved correct the Supreme Court of Indiana when it stated in its opinion in the Williams case at p. 457,

“the lease was one that the Citizens Gas Company and Indianapolis Gas Company had power to execute and one which would result in great advantage to the Citizens Gas Company.”

We shall not here discuss the conclusiveness of the findings of the Public Service Commission as to the fairness of the lease terms as against the present collateral attack City now seeks to make, nor the binding determination of this issue by the Supreme Court in Indiana in *Williams v. Citizens Gas Company, et al.*, and *Fishback v. Public Service Commission, et al.* These matters are discussed in original brief of Indianapolis Gas on pages 29-61.

Whatever other test of burdensomeness might be employed, it is submitted that this trust is now, after 22 years of benefit and use of the lease, precluded from attacking the same on grounds that it was burdensome either “when made,” as urged by the City, or that it is so now.

CONCLUSION.

It is respectfully submitted that no error is present in the judgment of the Circuit Court of Appeals, and that it should be affirmed.

Respectfully submitted,

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Company, Respondent.*

APPENDIX A.

(All emphasis in these quotations is ours.)

Indiana Acts 1913, Chapter 76, Section 95½, page 199:

“That with the consent and approval of the commission but not otherwise, any two or more public utilities, furnishing a like service or product and doing business in the same municipality or locality within this state, or any two or more public utilities whose lines intersect or parallel each other within this state may be merged and may enter into contracts with each other that will enable such public utilities to operate their lines or plants in connection with each other; and any public utility may also, with the consent of the holders of three-fourths of the capital stock outstanding, purchase or lease the property, plant or business or any part thereof of any other such public utility at a price and on terms fixed by the commission. Any such public utility may, with the consent of three-fourths of the holders of the outstanding stock, sell or lease its property or business or any part thereof to any other such public utility at a price and on terms fixed by the commission upon paying in cash to non-consenting stockholders the appraised value of their stock as fixed by the commission.”

APPENDIX B.

Indiana Acts 1905, Chapter 129, Section 53 (in part), page 247; Burns' 1933, sec. 48-1407:

“Sec. 53. The common council of every city shall have power to enact ordinances for the following purposes:

First. To provide a corporate seal, with appropriate device, for such city, to be affixed to all instru-

merts or writings needing authentication. * * *

"Sixth. To receive gifts, donations, bequests and public trusts and to agree to conditions and terms accompanying the same and bind the corporation to carry them out. * * *"

APPENDIX C.

Indiana Acts 1929, Chapter 78, Section 1, pages 268, 271:

"That if in the original articles of incorporation of any corporation organized under the laws of this state prior to May 1st, 1913 (that being the date of the creation of the public service commission of this state), for the purpose of furnishing natural or artificial gas for fuel or for illuminating purposes, or for furnishing electric lights or water to the citizens of any town or city within this state, or to furnish light, heat and power to any town or city, or the inhabitants thereof, provision is made for the transfer or conveyance of the property of such corporation to such town or city, *subject to the outstanding legal obligations of said corporation*, whenever the holders or owners of shares of stock, stock certificates or holders or owners of any beneficial interest in such capital stock shall have received the face or par value of such shares of stock, stock certificates or beneficial interest, together with the interest or dividends thereon provided for in such articles of incorporation, such provision in such articles shall be, and is hereby legalized and declared to be valid and binding upon such corporation and upon the holders and owners of any such shares of stock, stock certificates or beneficial interest therein or their assigns, and said town or city shall be authorized and entitled to *accept a transfer and conveyance of any such property* in accordance with the terms and conditions of

such articles of incorporation, without the question of the acceptance or acquisition of such property being submitted to a vote of the electors of such town or city * * *

"Whenever any instrument of transfer or conveyance shall be executed, transferring or conveying the property, either real or personal, of any such corporation to such town or city, the title to such property *shall* vest in such town or city, *subject to all outstanding legal obligations* of said corporation * * *

"Said municipal corporation shall be *authorized to accept, hold and own* all the property of such corporation so transferred to it, including that located within this state and that located in any other state and any shares of stock or other interest in any other corporation of which said corporation making such transfer shall be the owner, and *any right, title or interest such transferring corporation may have in any lease upon other property* * * *

APPENDIX D.

Indiana Acts 1929, Chapter 77, Section 3, pages 257, 259:

"The said board of directors for utilities shall have the exclusive government, management, regulation and control of any water works, gas works, electric light works, heating and power plants, and all property relating thereto, which any such city may heretofore have acquired or may hereafter acquire or construct for the service of the public as consumers, and such board of directors shall be charged with the duty of and shall have all necessary power to make all necessary repairs, renewals, enlargements, extensions or additions to any such plant or property which in the judgment of said

board of directors is desirable or necessary for the proper serving of the inhabitants of said city and the adjacent community served with respect to any such utility from any such plant or plants. In connection with the duties devolving upon such board of directors as aforesaid, it shall have power as follows:

(1) To condemn, appropriate, *lease*, rent, purchase and hold *any real estate*, rights of way, materials or *personal property* within such city or within five (5) miles of the corporate limits thereof, needed for the proper giving of service by any such utility to the inhabitants of said city and the community contiguous thereto and served from any such utility plant. * * *

“(7) To take over, adopt and *assume the performance of the provisions of any lease under which any utility property may be held at the time of the acquisition* of any utility by any such city, and to take any and all steps necessary to *perform* and fulfill the terms of *any such lease*, and to obtain and preserve the benefits therefrom; and in event there be any outstanding *open mortgage* upon the property covered by *any such lease* so taken over under the provisions of which bonds may be withdrawn from the trustee under such mortgage for the purpose of paying all or part of the cost of additions to the property covered by such mortgage, to do and perform all things necessary in order to secure the benefit of such mortgage provisions and to enable the escrow bonds held by the trustee under any such mortgage to be taken down and sold in order to defray the cost of any extensions and *betterments to such leased property* and, subject to the approval of the public service commission of Indiana, to sell any such bonds so taken down for the purpose of assisting in defraying the costs

of any such extensions or betterments to such leased property. * * *

APPENDIX E.

Indiana Acts 1921, Chapter 93, pages 197, 198:

"Any public utility operating under an existing license, permit, or franchise, from any county, city or town, within the State of Indiana, shall upon filing at any time prior to July 1, 1923, with the auditor or clerk of any such county, city or town which granted such license, permit or franchise, and with the public service commission of Indiana, a written declaration, legally executed that it surrenders such license, permit or franchise, receive by operation of law in lieu thereof an indeterminate permit as provided in the act creating the public service commission of Indiana, entitled "An act concerning public utilities, creating a public service commission, abolishing the railroad commission of Indiana, and conferring the powers of the railroad commission on the public service commission," approved March 4, 1913, and such public utility shall hold such permit under all the terms, conditions and limitations of said act as fully and completely as if the same had been done prior to July 1, 1915."

APPENDIX F.

Indiana Acts 1905, Chapter 139, Section 1, pages 434, 435:

"Whenever three (3) or more persons may desire to form a company to carry on any of the following named purposes, to wit:

(a) Any kind of manufacturing, mining, mechanical or chemical business or to furnish motive power to conduct such business;

(b) To supply any city, town, village or community with water, light, heat or power;

(c) To own, construct, operate and maintain stockyards and transit companies and conduct and transact the business incident thereto;

(d) To own, construct, maintain and operate grain elevators or flour mills or both and transact the business incident thereto, including the manufacture of flour, meal and all grain and cereal products, and the buying and selling of grain and cereals of all kinds, and the manufactured products thereof, and also including the right to own and maintain motive power to conduct such business;

(e) To buy and sell any kind or kinds of merchandise in connection with the manufacture of such merchandise, and for the sale of such merchandise when manufactured. They shall make, sign and acknowledge before some officer capable of taking acknowledgments of deeds, a certificate in writing, which shall state the corporate name adopted by the company, the object or objects of its promotion, which may include any or all of the purposes included in any one of the above named subdivisions of this section, the amount of the capital stock, the term of its existence (not, however, to exceed fifty (50) years), the number of directors and the names of those who shall manage the affairs of such company for the first year, and the name of the city or town in which its principal place of business is to be located, and file the same in the office of the recorder of such county, where it shall be recorded, and a duplicate thereof in the office of the secretary of state;

(f) To buy, sell and lease lands and buildings and other structures thereon, and to erect dwelling and other buildings and structures on lands leased or purchased."

APPENDIX G.

Indiana Acts 1913, Chapter 76, Sections 100, 101, pages 201, 202:

"Sec. 100. Every license, permit or franchise hereafter granted to any public utility shall have the effect of an indeterminate permit subject to the provisions of this act, and subject to the provision that the license, franchise or permit may be revoked by the commission for cause or that the municipality in which the major part of its property is situated may purchase the property of such public utility actually used and useful for the convenience of the public at any time as provided herein, paying therefor the then value of such property as determined by the commission and according to the terms and conditions fixed by said commission, subject to all the provisions as to hearings and appeals set out in section one hundred and five (105) and section one hundred and six (106) hereof. Any such municipality is authorized to purchase such property and every such public utility is required to sell such property at the value and according to the terms and conditions determined by the commission as herein provided. If this act should be repealed or annulled then all such indeterminate franchises, permits or grants shall cease and become inoperative and in place thereof such utility shall be reinstated in the possession and enjoyment of the license, permit or franchise surrendered by such utility at the time of the issue of the indeterminate franchise, permit or grant but in no event shall such reinstated license, permit or franchise be terminated within a less period than five years from the date of the repeal or annulment of this act."

"Sec. 101. Any public utility operating under an existing license, permit or franchise shall, upon

filing at any time prior to the expiration of such license, permit or franchise and prior to July 1, 1915, with the clerk of the municipality which granted such franchise and with the commission, a written declaration, legally executed, that it surrenders such license, permit or franchise, receive by operation of law, in lieu thereof an indeterminate permit as provided in this act; and such public utility shall hold such permit under all the terms, conditions and limitations of this act."

APPENDIX H.

Indiana Acts 1913, Chapter 76, Section 97, page 200:

"No license, permit or franchise shall be granted to any person, copartnership or corporation to own, operate, manage or control any plant or equipment of any public utility in any municipality where there is in operation a public utility engaged in similar service under a license, franchise or permit without first securing from the commission a declaration after a public hearing of all parties interested, that public convenience and necessity require such second public utility. Any existing permit, license or franchise which shall contain any term whatsoever interfering with the existence of a second public utility is hereby declared to be against public policy and is hereby amended in such manner as to permit a municipality to grant a license, franchise or permit for the operation of such second public utility pursuant to the provisions of this act."

APPENDIX I.

Indiana Acts 1913, Chapter 76, Section 110, pages 205, 206:

“Every municipal council shall have power, (a) to determine by contract, ordinance or otherwise the quality and character of each kind of product or service to be furnished or rendered by any public utility furnishing any product of service within said municipality and all other terms and conditions not inconsistent with this act upon which such public utility may be permitted to occupy the streets, highways, or other public property within such municipality, and such contract, ordinance or other determination of such municipality shall be in force and prima facie reasonable. Upon complaint made by such public utility or by any qualified complainant as provided in sections 57 to 71 the Commission shall set a hearing as provided in sections 57 to 71, and if it shall find such contract, ordinance or other determination to be unreasonable, such contract, ordinance or other determination shall be void. (b) To require of any public utility by ordinance or otherwise such additions and extensions to its physical plant within said municipality as shall be reasonable and necessary in the interest of the public, and to designate the location and nature of all such additions and extensions, the time within which they must be completed and all conditions under which they must be constructed subject to review by the commission as provided in subdivision (a) of this section. (c) To provide for a penalty for noncompliance with the provisions of any ordinance or resolution adopted pursuant to the provisions hereof. (d) The power and authority granted in this section shall exist and be vested in said municipalities anything in this act to the contrary notwithstanding: Provided, however, Whenever after a request by petition in writing of any public utility, the city or other political subdivision or other body, having jurisdiction of the matter, shall refuse or fail for a period of thirty (30) days, to give or grant to such public utility permission and

authority to construct, maintain and operate any additional construction, equipment, or facility reasonably necessary for the transaction of the business of such public utility, and for the public convenience or interest, then such public utility may file a petition with said commission for such right and permission, which petition shall state with particularity the construction, equipment or other facility desired to be constructed and operated, and show a reasonable public necessity therefor, and also the failure or refusal of such city, political subdivision or other body to give or grant such right or permission; and the commission shall thereupon give notice of the pendency of such petition, together with a copy thereof, to such city or other political subdivision or body of the time and place of hearing of the matter set forth in such petition; and such commission shall have power to hear and determine such matters and to give or grant such right and permission and to impose such conditions in relation thereto as the necessity of such public utility and the public convenience and interest may reasonably require."

APPENDIX K.

Burns' Indiana Statutes 1933, Section 33-409:

"Deeds in trust for grantor.—All deeds of gift, conveyances, transfers or assignments, verbal or written, of goods or things in action, made in trust for the use of the person making the same, shall be void as against creditors, existing or subsequent, of such person."

APPENDIX L.

Indiana Acts 1913, Chapter 76, Section 130, page (167)
214:

“Sec. 130. All acts and parts of acts conflicting with the provisions of this act are repealed in so far as they are inconsistent herewith.”